



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

SLR:KAN

*271 Cadman Plaza East
Brooklyn, New York 11201*

January 28, 2009

ELECTRONICALLY FILED
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Honorable Jack B. Weinstein
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: In re Newsday Litigation,
Criminal Action No. misc-08-0096 (Weinstein, J.)

United States v. \$15,000,000,
Civil Action No. CV-08-5280 (Feuerstein, J.)

Dear Judge Weinstein:

The Government respectfully writes to advise the Court of the status of the monies forfeited in the above-referenced civil forfeiture action because the Government understands that the availability of these monies was a consideration in the Court's decision not to order restitution in the related criminal litigation. Specifically, the Government writes to advise the Court that it has not received any petitions for remission of the forfeiture from victims and that, as such, it intends to recommend that the Department of Justice dispose of the forfeited funds in accordance with applicable law and regulations. Once the monies have been disposed of, the Department of Justice cannot consider any petition for remission. 28 C.F.R. § 9.4(a).

As the Court is aware, in the Newsday litigation, nine defendants pled guilty to a fraudulent scheme that inflated the circulation statistics for Newsday and Hoy. The inflated statistics allowed the newspapers to charge higher advertising rates. Newsday and Hoy entered into a non-prosecution agreement with the United States, pursuant to which Newsday consented to the forfeiture of \$15 million. The forfeiture was accomplished through the filing of the above-referenced civil action on or about December 19, 2007. In that complaint, the Government alleged that the defendant funds constituted or were derived from the proceeds of a mail fraud, specifically the fraud that was at issue in this criminal case. As was represented in open court and in the Government's sentencing submissions, victims of the Newsday and Hoy

fraud may petition the Attorney General for remission of the forfeiture.

Section 981(e)(6) of Title 18 authorizes the Attorney General, in his discretion, to transfer forfeited property “as restoration to any victim of the offense giving rise to the forfeiture” 18 U.S.C. § 981(e)(6). See also 28 C.F.R. Part 9. Indeed, the remission process, as detailed in the Code of Federal Regulations, was designed to “provide a basis for ameliorating the effects of forfeiture through the partial or total remission of forfeiture” for, inter alia, victims.¹ 28 C.F.R. § 9.1(a).

Victims may petition the Attorney General for remission of a forfeiture by filing a sworn statement detailing his or her claim and the amount of the loss. See 28 C.F.R. § 9.4(e). The victim must also demonstrate that:

- (1) A pecuniary loss of a specific amount has been directly caused by the criminal offense, or related offense, that was the underlying basis for the forfeiture, and that the loss is supported by documentary evidence including invoices and receipts;
- (2) The pecuniary loss is the direct result of the illegal acts and is not the result of otherwise lawful acts that were committed in the course of a criminal offense;
- (3) The victim did not knowingly contribute to, participate in, benefit from, or act in a willfully blind manner towards the commission of the offense, or related offense, that was the underlying basis of the forfeiture;
- (4) The victim has not in fact been compensated for the wrongful loss of the property by the perpetrator or others; and
- (5) The victim does not have recourse reasonably available to other assets from which to obtain compensation for the wrongful loss of the property.

28 C.F.R. § 9.8(a).

¹ The term “victim” is defined as a person “who has incurred a pecuniary loss as a direct result of the commission of the offense underlying a forfeiture” and “does not include one who acquires a right to sue the perpetrator of the criminal offense for any loss by assignment, subrogation inheritance, or otherwise from the actual victim, unless that person has acquired an actual ownership interest in the forfeited property.” 28 C.F.R. § 9.2(v). Because the victims of the fraud charged in the criminal cases are also victims of the offenses alleged in the civil forfeiture complaint, these victims may petition for remission of the forfeited monies.

In this case, all victims registered with this Office's Victim Notification System ("VNS") received communication advising them of their right to file a petition for remission of the forfeiture. The notice, which was also posted on this Office's website, included a form of petition and a copy of the applicable regulations. Although the civil forfeiture was filed over one year ago, to date, no one has filed a petition for remission. Accordingly, if no petitions are filed within thirty days of this letter, this Office intends to advise the appropriate authorities that it has no objection to the disposal of the forfeited monies.

Thank you for Your Honor's consideration of this submission.

Respectfully submitted,

BENTON J. CAMPBELL
United States Attorney

By: /s/
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cc: All Victims Registered in VNS

To Be Posted on United States Attorney's website